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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES LEE FOREMAN,

Defendant and Appellant.

C070520

(Super. Ct. No.
11F04376)

Defendant Charles Lee Foreman entered a negotiated plea of no contest to first degree burglary (Pen. Code, § 459)¹ in exchange for a stipulated state prison sentence of two years. The court sentenced defendant accordingly and awarded 147 actual days and 72 conduct days for a total of 219 days of presentence custody credit.

Defendant appeals. He contends that he is entitled to day-for-day credit based on the October 1, 2011, amendment to

¹ Undesignated section references are to the Penal Code.

section 4019 (Stats. 2011, ch. 15, § 482, Stats. 2011, ch. 39, § 53, and Stats. 2011, 1st Ex. Sess., ch. 12, § 35). Although recognizing that the Legislature, in making the change in the law, expressly stated that it has prospective application only, defendant argues that by doing so, the change violates his equal protection rights. We reject this contention. Defendant also contends, and the People concede, that the abstract of judgment requires correction to reflect the oral pronouncement of judgment. We agree with this contention and will order the abstract corrected.

I

As stated in *People v. Lara* (2012) 54 Cal.4th 896 (*Lara*): “Today local prisoners may earn day-for-day credit without regard to their prior convictions. (See § 4019, subds. (b), (c) & (f), as amended by Stats. 2011, ch. 15, § 482.) This favorable change in the law does not benefit defendant because it expressly applies only to prisoners who are confined to a local custodial facility ‘for a crime committed on or after October 1, 2011.’ (§ 4019, subd. (h), italics added.) [¶] Defendant argues the Legislature denied equal protection (see U.S. Const., 14th Amend.; Cal. Const., art. I, § 7) by making this change in the law expressly prospective. We recently rejected a similar argument in *People v. Brown* (2012) 54 Cal.4th 314, 328–330 [142 Cal. Rptr. 3d 824] (*Brown*).^[2] As we there

² *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*) held that former section 4019 (Stats. 2009, 3d Ex. Sess., 2009–2010, ch. 28, § 50) applied prospectively only, “meaning that

explained, "[t]he obvious purpose" of a law increasing conduct credits "is to affect the behavior of inmates by providing them with incentives to engage in productive work and maintain good conduct while they are in prison." [Citation.] "[T]his incentive purpose has no meaning if an inmate is unaware of it. The very concept demands prospective application." (Brown, at p. 329, quoting *In re Strick* (1983) 148 Cal. App. 3d 906, 913 [196 Cal. Rptr. 293].) Accordingly, prisoners who serve their pretrial detention before such a law's effective date, and those who serve their detention thereafter, are not similarly situated with respect to the law's purpose. (Brown, at pp. 328-329.) (Lara, supra, 54 Cal.4th at p. 906, fn. 9.)

Here, defendant committed his offense on January 26, 2011. The day-to-day credit, without regard to the fact that the current offense is a serious felony and without regard to prior

qualified prisoners in local custody first became eligible to earn credit for good behavior at the increased rate beginning on the statute's operative date." (*Id.* at p. 318.) Brown decided that retroactive application was not required: "The statute contains no express declaration that increased conduct credits are to be awarded retroactively, and no clear and unavoidable implication to that effect arises from the relevant extrinsic sources, i.e., the legislative history." (*Id.* at p. 320.) Brown also decided that prospective application of former section 4019 does not violate the equal protection clauses of the federal and state Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7, subd. (a).) "[T]he important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows." (Brown, supra, 54 Cal.4th 314, 328-329.)

serious or violent felony convictions (§ 4019, subds. (b), (c), (f), as amended by Stats. 2011, ch. 15, § 482), does not apply to defendant because the change applies to those prisoners confined "for a crime committed on or after October 1, 2011." (§ 4019, subd. (h).) The change applies prospectively only. That he is not entitled to retroactive application of that section as amended does not violate his equal protection rights. (*People v. Lara, supra*, 54 Cal.4th at p. 906, fn. 9; *People v. Brown* (2012) 54 Cal.4th 314, 320.)

II

As defendant contends and the People concede, the abstract erroneously reflects a discretionary \$10 crime prevention fine (§ 1202.5, subd. (a); see *People v. Walz* (2008) 160 Cal.App.4th 1364, 1369; *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1518-1519; see also *People v. Crittle* (2007) 154 Cal.App.4th 368) which the trial court never orally imposed. We will order the abstract corrected to delete this \$10 fine. (*People v. Mitchell* (2001) 26 Cal.4th 181, 186.)

DISPOSITION

The trial court is directed to prepare a corrected abstract of judgment deleting the \$10 crime prevention fine (§ 1202.5) and to forward a certified copy to the Department of Corrections and Rehabilitation. The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

MAURO, J.

DUARTE, J.